

AMENDED IN ASSEMBLY JUNE 13, 2006

AMENDED IN SENATE MARCH 27, 2006

**SENATE BILL**

**No. 1395**

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**Introduced by Senator Ducheny**

February 22, 2006

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An act to add Section 21099 to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Ducheny. Environmental quality: Native American sites.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to evaluate whether an activity is a project subject to CEQA or comes within an exemption, and if the activity is determined to be a project to prepare, or cause to be prepared, and certify the completion of, an environmental impact report or to adopt a negative declaration, as required. CEQA provides for specified exemptions from its provisions.

This bill would require a lead agency that determines that a project is exempt from CEQA and may directly or indirectly affect a California Native American prehistoric, archeological, cultural, spiritual, or ceremonial place, as specified, ~~before acting on the project,~~ *to notify, as specified, the Native American tribes for whom the particular site holds relevance. The bill for a project with a timeline that exceeds 30 days would require the lead agency to consult with a Native American tribe on a specified contact list, regarding the potential direct or indirect affect on the that place, and to provide the notice of exemption for the project to that tribe before that*

~~consultation and at least 45 days before acting on the project by the proposed project.~~

(2) Because this bill would impose new duties on local governments with respect to consulting with a Native American tribe and providing the tribe with a notice of exemption, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21099 is added to the Public Resources  
2 Code, to read:

3 ~~21099. If a lead agency determines that a project is exempt~~  
4 ~~from this division and may directly or indirectly affect a~~  
5 ~~California Native American prehistoric, archeological, cultural,~~  
6 ~~spiritual, or ceremonial place, as described in Sections 5097.9~~  
7 ~~and 5097.993, the lead agency shall do both of the following~~  
8 ~~prior to acting on the project:~~

9 ~~(a) Consult with a Native American tribe on the contact list~~  
10 ~~maintained by the California Native American Heritage~~  
11 ~~Commission to protect that California Native American~~  
12 ~~prehistoric, archeological, cultural, spiritual, or ceremonial place,~~  
13 ~~regarding the potential direct or indirect affect on that place.~~

14 ~~(b) Provide the notice of exemption for the project to that tribe~~  
15 ~~prior to consultation pursuant to subdivision (a) and at least 45~~  
16 ~~days prior to acting on the project.~~

17 ~~21099. If a lead agency determines that a project is exempt~~  
18 ~~from this division and may directly or indirectly affect a~~  
19 ~~California Native American prehistoric, archeological, cultural,~~  
20 ~~spiritual, or ceremonial place, including those places described~~  
21 ~~in Sections 5097.9 and 5097.993, or listed or determined eligible~~  
22 ~~for listing on the California or National Registers of Historic~~  
23 ~~Places, the lead agency shall do the following:~~

1     (a) *Within 10 days of the determination that the project is not*  
2 *subject to this division, notify in writing all Native American*  
3 *tribes, for whom the California Native American Heritage*  
4 *Commission identifies the particular site holds relevance, of the*  
5 *following:*

6     (1) *The location of the project.*

7     (2) *A detailed description of the project.*

8     (3) *The justification for the exemption from this division.*

9     (4) *A description of the potential effects of the project on the*  
10 *Native American site.*

11     (5) *A list of all alternatives to the project that were considered*  
12 *by the lead agency.*

13     (6) *A single point of contact at the lead agency for use by a*  
14 *tribe should they wish to consult with the lead agency on the*  
15 *project.*

16     (b) (1) *For a project with a timeline for design, planning, and*  
17 *construction that exceeds 30 days, the lead agency shall consult*  
18 *with a Native American tribe on the contact list maintained by*  
19 *the California Native American Heritage Commission to protect*  
20 *that California Native American prehistoric, archeological,*  
21 *cultural, spiritual, or ceremonial place, regarding the potential*  
22 *direct or indirect effect on that place by the proposed project.*

23     (2) *For purposes of this section, consultation means the*  
24 *meaningful and timely process of seeking, discussing, and*  
25 *considering carefully the views of others, in a manner that is*  
26 *cognizant of all parties' cultural values, and where feasible,*  
27 *seeking agreement. Consultation includes recognizing a tribe's*  
28 *potential need for confidentiality with respect to places that have*  
29 *traditional tribal cultural significance.*

30     SEC. 2. *No reimbursement is required by this act pursuant to*  
31 *Section 6 of Article XIII B of the California Constitution because*  
32 *a local agency or school district has the authority to levy service*  
33 *charges, fees, or assessments sufficient to pay for the program or*  
34 *level of service mandated by this act, within the meaning of*  
35 *Section 17556 of the Government Code.*